is not unconstitutional. *Peck & Co.* v. *Lowe*, 55 N. Y. L. J. 981 (Dist. Ct., S. Dist. N. Y.).

For discussion of this case, see NOTES, p. 77.

CONTRACTS — CONTRACTS IMPLIED IN FACT — CONSTRUCTION OF CONTRACTS — MOVING PICTURE RIGHTS AS PART OF RIGHTS OF DRAMATIZATION. — Plaintiffs, who own the copyright of a dramatization of "Ben Hur," in 1899 granted defendants the sole right of "producing on the stage" or "performing" the play. Royalties were to be computed in a manner wholly inapplicable to any method of producing moving pictures. Defendants have recently threatened to make a photoplay based on the dramatization. Plaintiffs bring a bill in equity to restrain them, and defendants, in turn, counterclaim, asking that the plaintiffs be enjoined from making such a photoplay. *Held*, that both injunctions should be granted. *Harper Bros.* v. *Klaw*, 232 Fed. 609 (Dist. Ct., S. Dist., N. Y.).

A general grant of dramatization rights has been held to include the right to make moving pictures. *Frohman* v. *Fitch*, 164 App. Div. 231, 149 N. Y. Supp. 633. But in the principal case the court finds that owing to the agreed method of computing royalties, the grant includes only the right to produce the play on the legitimate stage. It, however, enjoins the plaintiff from using the moving picture rights thus found to be in him, on the ground of a negative covenant implied in the contract. If such covenant exists, it obviously cannot be directly aimed at moving picture production, since the art was in its infancy and hardly in the minds of the parties at the time they made the contract. The implied negative covenant referred to must therefore be a general one, to do nothing detrimental to the value of the dramatization rights granted. But even in the sale of the good will of a business, most courts will allow the vendor to set up a rival establishment, and simply limit him from soliciting the customers of the old business. See 24 HARV. L. REV. 311. Yet it is certainly easier to imply a general negative covenant from a sale of "good will" than from a sale of the sole dramatic rights. Cf. *Cescinsky* v. *Routledge & Sons*, [1916] 2 K. B. 325, 328.

CORPORATIONS — CITIZENSHIP AND DOMICILE OF CORPORATIONS — ENEMY CHARACTER: DOMESTIC CORPORATION WITH ALIEN ENEMY SHAREHOLDERS AND DIRECTORS. — An English company, all but one of whose shareholders and all of whose directors were German subjects resident in Germany, brought suit in England on an admitted debt. Defenses were that the agent who authorized the suit had no authority to do so, and that payment to such a company would be illegal as trading with the enemy. *Held*, for the defendant on the ground first stated. On the second point the Lords were in dispute. *Daimler* v. *Continental Tyre and Rubber Co.*, [1916] 2 A. C. 307 (House of Lords).

It is certain that a corporation takes no character simply from the nationality of its shareholders. *Hastings* v. *Anacortes Packing Co.*, 29 Wash. 224, 69 Pac. 776; *Queen* v. *Arnaud*, 16 L. J. Q. B. (N. S.) 50; *Amorduct Mfg. Co.* v. *Defries & Co.*, 31 T. L. R. 69. The case is therefore one of those that tempt a court to look through corporate entity to the incorporators. Our feeling toward such cases will depend on our belief or lack of it in the objective reality of the corporate identity. *Cf.* MORAWETZ, CORPORATIONS, 2 ed., § 227 *seq.*, with Laski, "The Personality of Associations," 29 HARV. L. REV. 404. One statement on which lawyers should agree is that the corporate entity should not be disregarded if the result sought can be reached on any other ground. See 20 HARV. L. REV. 223. In the principal case there was no danger that any sums paid to the corporation would reach the German shareholders until after the termination of the war. See *Continental Tyre and Rubber Co.* v. *Daimler Co.*, [1915] 1 K. B. 893, 905; 28 HARV. L. REV. 629. The injury of enemies after the

war is over has not before now been considered a proper basis for judicial action. Another ground suggested in the judgments is that the corporate entity has itself taken hostile character from the fact that it is probably controlled largely from abroad. It is a commonplace that enemy character depends primarily on residence. *Albretcht* v. *Sussmann*, 2 Ves. & B. 323. And there are serious theoretic difficulties in finding a corporation resident anywhere except in the state of its incorporation. See BEALE, FOREIGN CORPORATIONS, § 73 *seq.* So it had been provided: "In the case of incorporated bodies, enemy character attaches only to those incorporated in an enemy country." PROCLAMATION ON TRADING WITH THE ENEMY, Sept. 9, 1914, par. 3. TRADING WITH THE ENEMY ACT, 1914, par. 1, (2). There is, however, respectable authority to the effect that a corporation takes character from the place of its chief administrative office, wherever it may be incorporated. *Martine* v. *International Life Ins. Ass'n*, 53 N. Y. 339. See E. Hilton Young, "The Nationality of a Juristic Person," 22 HARV. L. REV. 1, 18. Of course if it has given actual assistance to the enemy, there is good ground for refusing it relief. *Netherlands South African Ry. Co.* v. *Fisher*, 18 T. L. R. 116. In the case before the court, however, there was no suggestion that the corporation had actually helped the enemy, nor that its head office was anywhere except at London. With enemy shareholders and directors suspended from their powers *pendente bello*, the possibility of control from Germany would be a very slender basis for decision.

EASEMENTS — NATURE AND CLASSES OF EASEMENTS — EASEMENT OF NECESSITY — RIGHT OF ACCESS TO GAS AND OIL. — The plaintiff was lessee of land, under an "agricultural lease" in which no specific reservations or exceptions were made. Later the owner of the land leased the gas and oil under the tract to the defendants. The defendants occupied enough of the surface of the land for the machinery necessary for drilling. The plaintiff seeks an injunction against the occupation of this land. *Held*, that the injunction will not issue. *Kemmerer* v. *Midland Oil & Drilling Co.*, 229 Fed. 872 (C. C. A., 8th Circ.).

When a lease of land is made without reservation or exception, the lessor parts with his entire right of possession during the term. *Cobb* v. *Lavalle*, 89 Ill. 331. Consequently he can give no right to a subsequent lessee. But the court in the principal case construes the words "agricultural lease" to imply that only the surface was granted, with the rest of the land excepted. It is elementary that a landowner may by grant divide his land horizontally as well as vertically. *Caldwell* v. *Fulton*, 31 Pa. St. 475; *Manning* v. *Frazier*, 96 Ill. 279. On conveying away part of his land, an owner is entitled to a way of necessity over that part if the rest of his holdings cannot be otherwise reached. *Brigham* v. *Smith*, 4 Gray (Mass.) 297; *Telford* v. *Jenning Producing Co.*, 203 Fed. 456. Accordingly it has been held that a grantor who retains the oil under his land has a right of access to his holdings. See 7 HARV. L. REV. 47. This right would of course pass to a subsequent grantee or lessee of the land retained. It would seem therefore in the principal case that the defendant should be entitled to occupy the land necessary for the enjoyment of his lease.

HABEAS CORPUS — UNCONSTITUTIONAL PROCEDURE IN TERRITORIAL COURT AS GROUNDS FOR ISSUANCE OF WRIT BY FEDERAL COURT. — In a criminal trial in the Circuit Court of Hawaii the court allowed the prosecution to read to the jury the testimony of a witness given at a former trial, thus violating the prisoner's constitutional right to be confronted with the witnesses against him. The prisoner seeks a writ of *habeas corpus* in the United States District Court. *Held*, that the writ will not issue. *In re James P. Curran*, U. S. Dist. Ct. of Hawaii, April, 1916 (not yet reported).

The "Federal Habeas Corpus Act" provides that the writ shall not issue in